

SIERRA CLUB ET AL.

IBLA 80-565

Decided August 20, 1982

Appeal from a decision of the Acting Wyoming State Director, Bureau of Land Management, denying the protest of BLM's exclusion of units WY-040-222 and WY-040-223 from further wilderness review.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units; the term "outstanding" is necessarily comparative in concept.

2. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

APPEARANCES: William S. Curtiss, Esq., Sierra Club Legal Defense Fund, Inc., Denver, Colorado, for appellants; Nikki Ann Westra, Esq., John Pendergrass, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Sierra Club et al. ^{1/} appeal from a decision of the Acting Wyoming State Director, Bureau of Land Management (BLM), dated March 3, 1980, denying their protest of the exclusion of inventory units WY-040-222 and WY-040-223 from further wilderness review. After submitting a notice of appeal for the aforementioned units, appellants sought to dismiss their appeal of unit WY-040-222, known as the Igo Speedway unit; counsel for BLM reiterated this request by a pleading filed August 25, 1980. There appearing no objection of record, appellants' request to dismiss the appeal as to this one unit is granted. The remainder of this decision will deal with BLM's decision to exclude unit WY-040-223 (Coal Creek) from further wilderness review.

The Acting State Director's review of the public lands for wilderness characteristics is authorized by section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

^{1/} Appellants also include: Construction Workers for Wilderness; Defenders of Wildlife; Friends of the Earth; The Wilderness Society; Wyoming Wilderness Association; Ken Morgan; Rita Randall; and Ron Smith.

In a decision, published on December 14, 1979, 44 FR 72659, BLM found that the Coal Creek unit did not possess wilderness characteristics and, accordingly, dropped it from further review. The basis for this decision was BLM's finding that the unit lacked outstanding opportunities for either solitude or a primitive and unconfined type of recreation. Appellants' protest of this decision was denied by the Acting State Director's decision of March 3, 1980.

[1] Appellants charge error in the denial of their protest and contend that BLM incorrectly compared the Coal Creek unit with other units in reaching its conclusion that outstanding opportunities are absent in the unit. Appellants cite Organic Act Directive (OAD) 78-61, Change 3, in support of their contention that there must be no comparison among inventory units. This argument has been addressed by this Board in a number of cases, among them, ASARCO, Inc., 64 IBLA 50 (1982). Therein at page 59, we note that in order to attribute outstanding opportunities, values, or characteristics to land, the land must be compared with other lands, as the term "outstanding" is necessarily comparative in concept. Indeed, the Wilderness Inventory Handbook (WIH), authored by BLM, defines the term "outstanding" in this way: "Standing out among others of its kind; conspicuous; prominent; 2. superior to others of its kind; distinguished; excellent." BLM's comparison of the opportunities for solitude or a primitive and unconfined type of recreation in the Coal Creek unit with the opportunities of other areas in the region was proper; no error appears in its action.

[2] Appellants' statement of reasons includes the affidavit of a Sierra Club member who finds the unit's opportunities for solitude and a primitive and unconfined type of recreation to be outstanding. Outstanding opportunities for solitude are said to exist among large patches of lodgepole pine, aspen, and willow; similarly outstanding are opportunities for back-packing, hiking, camping, cross-country skiing, wildlife observation, and plant study. In its narrative summary, BLM identified stands of aspen and conifers in the unit and found that the area possessed many of the same recreation activities as set forth in the affidavit. Appellants' comments, therefore, amount to little more than a disagreement with BLM's determination that the area does not possess outstanding opportunities. As set forth in ASARCO, Inc., supra, this determination calls for a highly subjective judgment on BLM's part. The case file assembled by BLM evidences its firsthand knowledge of the lands. In addition, it has received the benefit of numerous comments from individuals and groups of wide ranging interests. BLM's expertise and familiarity entitle it, we believe, to our considerable deference in such subjective determinations. Appellants' views to the contrary, while not unreasonable, do not undermine this deference.

By giving such deference to BLM, we do not mean to imply that its determinations will be immune from review. To the contrary, BLM's documentation for its judgment will be carefully studied, as will the documentation of an appellant. An appellant will, however, have a particularly heavy burden to support a reversal of BLM's subjective conclusions. We cannot say that appellants have met this burden on the issue of the unit's outstanding opportunities for solitude or a primitive and unconfined type recreation. Conoco, Inc., 61 IBLA 23, 28 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Acting State Director is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

